

MANUFACTURED HOMES AND COMMUNITIES

This presentation was given by the Delaware Department of Justice, Consumer Protection Unit to the general public in New Castle County on August 24, 2009, Kent County on October 13, 2009, and Sussex County on November 5, 2009. It is intended to be an educational piece regarding certain aspects of Title 25, Chapters 70 and 71 and should NOT be relied upon in any manner for legal guidance and/or advice.

If a community would like to have the Consumer Protection Unit present this information at a community event, please contact 1-800-220-5424.

THE CONSUMER PROTECTION UNIT

- ◆ The Division of Consumer Protection (“CPU”) was established in the Department of Justice by 29 Del. C. §2517
 - Director of Consumer Protection
 - Deputy Attorneys General
 - Special Investigators
 - Intake Investigators
 - Administrative support

The Consumer Protection Unit and Manufactured Home Communities

- ◆ Chapters 70 & 71 of Title 25
- ◆ Role of ADR in landlord/homeowner disputes
- ◆ Role of the Attorney General's Office, State and County Government

Rental Agreement

- ◆ A “rental agreement” or “lease” is a written contract between the landlord and tenant establishing the terms and conditions that permit the manufactured home on the leased lot
- ◆ There are provisions under the law that must be in the agreement
- ◆ There are provisions under the law that are prohibited from being in an agreement.

Required provisions – examples

25 Del. C. § 7006 (a).

- Lot location
- Rent amount and due date
- Name of landlord or agent
- Legal grounds for termination
- Landlord's duty to maintain utilities provided
- Landlord's duty to maintain roads in good condition
- Provisions related to tenant privacy

More required provisions

- ◆ Tenant's duty to keep exterior of manufactured home in clean and sanitary condition
- ◆ Tenant's duty regarding storing items on lot
- ◆ Tenant's duty to abide by rules of park

Prohibited provisions – examples

25 Del. C. § 7006 (b)

- ◆ Waiver of legal process due prior to eviction.
- ◆ A late payment fee sooner than 5 days after payment due .
- ◆ Provisions for excessive fees.
- ◆ Indemnification for landlord's negligence.
- ◆ Requirement that tenant provide a key.

Community Rules

25 Del. C. §7019

A landlord can impose rules provided that they:

- ❑ Promote the health, safety, or welfare of tenants, residents, guests, or visitors
- ❑ Promote the residents' quiet enjoyment
- ❑ Preserve the property values
- ❑ Promote the orderly and efficient operation of the community
- ❑ Preserve the tenants' or landlord's property from abuse

More on Rules

- ◆ Rules cannot be arbitrarily enforced- a landlord cannot decide which tenant is subject to a rule.
- ◆ Rules may be amended at any time but cannot take effect until 60 days after notice is given to tenants.
- ◆ Rules cannot be used to avoid statutory prohibitions, e.g. a rule cannot require tenant to provide a key.
- ◆ Repeated rule breaking by tenants can be cause for termination of the lease.

Lease Termination

25 *Del. C.* §7007(b)

- ◆ A lease in a manufactured housing community renews automatically with the same provisions except that the rent can be increased once in a 12 month period. Note that there is no legal cap on the amount of the rental increase.
- ◆ A Notice of Termination or Non-Renewal is unenforceable unless the statutory requirements are met.
- ◆ Note that termination of a lease does not automatically equal eviction. Summary possession actions must still be filed pursuant to 25 *Del. C.* Chapter 57

Termination - Due Cause

Immediate termination

25 Del. C. §7010A(a)

- ◆ Conduct of a tenant or resident that threatens or causes irreparable harm to any person or property in the community
- ◆ Conviction of a crime (or adjudication of delinquency) that causes irreparable harm to a person or property in the community
- ◆ A material misrepresentation in the application that, if known, would have resulted in denial
- ◆ Failure to provide notice three weeks before the sale of a home as required by §7022(c)
- ◆ Failure to bring home into compliance with standards

Termination- Due Cause

Prior written notice

25 Del. C. §7010A(b)

Conduct – Tenant's conduct interferes with the quiet enjoyment of the premises – notice must be specific and warn that repeated conduct in 6 month period may be due cause for termination.

Condition – 'Due cause' based on a condition of the premises - tenant must get a notice allowing 12 days for correction.

Non payment of Rent – Rent not paid within the grace period – notice must provide that if rent isn't paid in 7 days the lease may be terminated.

Termination-Due Cause

Repeated non-compliance

25 Del. C. §7010(c)

- ◆ Repeated non compliance with a provision of the rental agreement or a rule material to the rental agreement including
 - ✓ Late rent – 4 occasions in 12 consecutive payment periods resulting in the 7 day notice
 - ✓ Failure to reimburse landlord for utility charge within 7 days of demand – 2 occasions in 12 consecutive payment periods
 - ✓ Dishonored check – 2 occasions in 12 consecutive payment periods
 - ✓ Repeated non-compliance with the lease or repeated rule breaking can be a basis for termination even if the situation is cured by the tenant

Termination - Due Cause

Change in land use

25 Del. C. §7010(b)

- Good faith plans to change the use of the land
- 1 year written notice
- Tenant relocation plan – Landlord must
 - ◆ identify other communities manufactured home communities, or housing for older persons or persons with disabilities, within 25 miles;
 - ◆ list government and community agencies that can assist a tenant; and
 - ◆ provide a description of relocation and abandonment procedures and a copy of the applicable section of the DE Code.

Sale of Housing by Tenant

25 *Del. C.* §7022(b)

- ◆ A 'for sale' sign cannot be prohibited but limits can be imposed
- ◆ A seller must give the landlord 3 weeks notice of a pending transfer along with the terms and the landlord may purchase the home at 1% over the sales price
- ◆ A landlord must accept or reject the buyer of a home in the community on the same basis acceptance or rejection of other buyer –and the explanation must be in writing

Transfer of lease – election

25 Del. C. §7022(d)

- ◆ A tenant-seller can assign the lease to the buyer with the existing terms – including the rent – for the remaining term of the lease OR
- ◆ A tenant-seller can terminate the lease and the buyer then negotiates for a new lease with new terms
- ◆ The election is made by the tenant-seller and the new tenant-buyer is bound by that decision
- ◆ Be aware! Tenants are permitted to “bargain away” this power at the time they enter into their lease

Sale of the Manufactured Home Community

25 Del. C. §7026

- ◆ An owner who decides to sell a community must give the homeowners' association the "right of first offer"
- ◆ Homeowners' association for a community must be registered with the Delaware Manufactured Home Relocation Authority
- ◆ The "right of first offer" must be communicated to the Relocation Authority, the Consumer Protection Unit and homeowners' association

Manufactured Home Relocation Trust Fund

25 Del. C. §7012

- ◆ Created by assessments to community owners and tenants
- ◆ Administered by Relocation Authority
- ◆ Provides for expenses/payment for homes that are not relocatable when there is a change in land use
- ◆ Provides payment for landlord for removal of abandoned homes

Impermissible Retaliation

25 Del. C. §7023

An act or attempt to

- Pursue summary possession,
 - Terminate a rental agreement,
 - Cause the tenant to move involuntarily, or
 - Decrease services AFTER
- ❑ Tenant has complained to landlord or enforcement authority about condition of premises that violates and applicable statute or regulation;
 - ❑ Enforcement authority has acted on tenant's complaint;
 - ❑ Tenant has formed or participated in tenant's association; OR
 - ❑ Tenant has taken legal action against landlord for any reason.

Rental Payments

- ◆ § 7015A. Rent -- Prohibited lump sum payments.
 - ◆ New leases, and leases renewed after June 24, 2009 must allow for the monthly payment of rent; except if otherwise agreed to by tenant and landlord.
 - ◆ Incentives for lump sum payments are permissible.

Who enforces the terms of the lease?

- ◆ A lease is a contract that the individual parties can enforce in court
- ◆ Landlord/Tenant private causes of action are filed with the JP Court
- ◆ The Attorney General has no authority to represent individuals
- ◆ The Attorney General will investigate only when there is a pattern or practice of lease violation 25 *Del. C.* §7025(b)

Examples of violations of the lease

Landlord has failed to –

- Regrade a lot to avoid stagnant water accumulation or the detrimental effects of moving water
- Maintain the roads or other common areas
- Identify the landlord or agent in the lease
- Provide a list of fees and services

Alternate Dispute Resolution

25 Del. C. §7001A

- ◆ Alternate dispute resolution (ADR) provides the parties to a lease with an alternative to litigation.
- ◆ Both parties must be willing to mediate if it is to be successful.
- ◆ An ADR specialist must be a DE attorney with 5 years experience or a person with 25 hours of training in dispute resolution.
- ◆ The mediation proceedings are confidential.
- ◆ Note that filing a request to mediate a dispute is not the same thing as filing a complaint with the Consumer Protection Unit. They are two separate processes.

More about ADR

- ◆ A mediation request can be filed by more than one person if the parties have a common issue in dispute and wish to file jointly.
- ◆ During the course of ADR, any applicable statute of limitations is tolled until 14 days after the ADR specialist files a notice of unsuccessful mediation.
- ◆ An application for ADR is online:

<http://attorneygeneral.delaware.gov/consumers/protection/housing/adr.pdf>

Advantages of ADR

- ◆ Possibly quicker than litigation
- ◆ The landlord and tenant must agree to participate in the process and agree to a solution
- ◆ Cheaper than litigation
- ◆ Covers most disputes between landlord and tenants that would not be within the jurisdiction of the Attorney General's office, including some lease violations, rules violations and statutory violations

Role of the Attorney General's Office

25 Del. C. §7025

- “...pattern or practice of violating or failing to comply with the terms of any provision of a rental agreement...”
- Enforce the provisions of the Manufactured Home Owners and Community Owners Act
- A “reasonable cause to believe” there is pattern or practice of violation of the terms of a rental agreement or a statutory violation will support an investigation into the alleged practice

Pattern or Practice of Lease Violations

- ◆ Violations affecting a number of tenants
- ◆ Violations occurring repeatedly over a period of time
- ◆ A reasonable cause to believe that a pattern or practice of lease violations will be the basis for an Attorney General's investigation.

Attorney General's Office Investigation

- ◆ Complaint filed via fax or mail
- ◆ Complaint is assigned to an Intake Investigator
- ◆ If it is determined that the AG's office cannot handle, the Complaint may be diverted to another agency or closed
- ◆ If AG's office can handle, the Complaint will be assigned to a Special Investigator who will conduct the investigation. This may include traveling to the park, interviewing the Complainant and other witnesses, interviewing the landlord and taking pictures.
- ◆ After closing the investigation, it will be assigned to a Deputy Attorney General who will determine the next step. This may be attempted reconciliation with the aggrieved party or Court action.

Role of State and County Government

- ◆ DNREC, e.g. septic system failure
- ◆ Division of Public Health, e.g. sub-standard water
- ◆ County Code, e.g. building setback

Contact information

Consumer Protection Unit

1-800-220-5424

New Castle County

820 N. French St.

Wilmington, DE 19801

Kent County

102 W. Water St.

Dover, DE 19904

Sussex County

114 E. Market St.

Georgetown, DE 19947